



# Appeal Decision

Site visit made on 20 June 2023

**by E Dade BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 July 2023**

## **Appeal Ref: APP/H2265/W/22/3309118**

### **Fernbank, 37 Stickens Lane, East Malling, West Malling ME19 6BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Daniel Young against the decision of Tonbridge and Malling Borough Council.
- The application Ref TM/21/03055/FL, dated 14 November 2021, was approved on 17 August 2022 and planning permission was granted subject to conditions.
- The development permitted is demolition of two semi-detached bungalows replaced with two detached 1.5 storey dwellings.
- The condition in dispute is No 9 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class A, AA, B or E Part 1; of Schedule 2 of that Order.*
- The reason given for the condition is: *In the interest of the rural amenity of the surrounding area.*

## **Decision**

1. The appeal is allowed and the planning permission Ref TM/21/03055/FL for demolition of two semi-detached bungalows replaced with two detached 1.5 storey dwellings at Fernbank, 37 Stickens Lane, West Malling ME19 6BT granted on 17 August 2022 by Tonbridge and Malling Borough Council, is varied by deleting condition No 9.

## **Preliminary Matters**

2. The site was under construction at time of my site visit.

## **Main Issue**

3. The main issue in this appeal is the effect of removing the disputed condition on the rural amenity of the surrounding area.

## **Reasons**

4. Condition no 9 removes a range of permitted development rights relating to the enlargement, improvement, or other alteration of the dwellings, such as the erection of extensions and outbuildings and additions or alterations to the roof.
5. Paragraph 54 of the Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance states that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness and necessity<sup>1</sup>.

<sup>1</sup> Paragraph: 017 Reference ID: 21a-017-20190723

6. The appeal site is separated from East Malling's main built area by a rail line which forms the site's side boundary. Whilst only a short distance from the built-up area, land to the southern side and rear of the site is undeveloped, agricultural land. The area surrounding the appeal site therefore has a predominantly rural character.
7. The appeal site is situated on a narrow, single-track lane with no pedestrian footway. The site is elevated, and views into the site are concealed by steep embankments with dense vegetation on either side of the lane. A raised bank and dense vegetation along the site's boundaries limits views into the site from surrounding agricultural land. Views from passing trains on the adjacent rail line would be only fleeting glimpses of the rear side of dwellings and would be partly obscured by vegetation along the site boundary. Whilst the development would be visible to residents and visitors from the shared driveway access, views into the site from surrounding land, including public vantage points such as the highway, are highly limited.
8. The proposed dwellings will be substantial in size, and the Council suggests that further enlargement or incidental structures would result in plots appearing dominated by development. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) includes provisions which limit the overall scale of development that can take place under permitted development rights. Namely, Classes A and E included an upper threshold for the area of the curtilage covered by extensions and outbuildings, Class B includes a maximum limit for additional volume to roof spaces, and Class AA would not apply to development constructed after 28 October 2018.
9. Since the site is well-screened, development carried out within the site through exercising permitted development rights would not be visually prominent and thus would not detract from the site's rural landscape setting.
10. Consequently, there is insufficient justification to impose additional restrictions on permitted development rights beyond those limitations which already exist within the GPDO. I therefore conclude that the disputed condition is not reasonable nor necessary to conserve the rural amenity of the surrounding area, and thus does not satisfy the tests set out at paragraph 56 of the Framework.

## **Conclusion**

11. For the reasons given I conclude that the appeal should be allowed, and I vary the planning permission by deleting the disputed condition. Other conditions imposed on the planning permission remain in effect.

*E Dade*

INSPECTOR